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August 28, 2008

VIA HAND DELIVERY

Mr. Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 6039 (Ros-Lehtinen for Congress)

Dear Mr. Jordan:

This office represents Ros-Lehtinen for Congress and its Treasurer Antonio Argiz (collectively "Respondents") in the above-captioned MUR. We have received the Complaint filed on July 14, 2008, by Fred Frost on behalf of the Miami-Dade Democratic Party. As detailed below, there is no reason to believe a violation occurred with respect to the allegations contained in the Complaint. Separately, given the very low amount of activity involved, the Commission should dismiss the Complaint based upon prosecutorial discretion pursuant to Heckler v. Chaney, 470 U.S. 821, 831 (1985). If the Commission were to decide to go forward with this matter, it should be assigned to the Alternative Dispute Resolution ("ADR") division for appropriate action.

THE COMPLAINT

The Complaint appears to allege, without any legal citations, that Respondents violated 11 C.F.R. § 102.17 by "participat[ing] in a joint fundraising event without observing established joint fundraising rules." Complaint at 1. The Complaint does not allege any facts regarding a "joint fundraising event," but instead attaches a copy of an invitation to a May 30, 2008 fundraising event held at the home of Armando and Beatriz Bucelo on behalf of Congresswoman Ileana Ros-Lehtinen and Congressmen Lincoln Diaz-Balart and Mario Diaz-Balart. Complaint at 2.

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FACTUAL BACKGROUND

On May 30, 2008, a small, low-dollar fundraising event ("May 30 event") was held at Armando and Beatriz Bucelo's home in Miami, Florida on behalf of Ros-Lehtinen for Congress, Lincoln Diaz-Balart for Congress, and Mario Diaz-Balart for Congress. Approximately 50 people attended the May 30 event, and Ros-Lehtinen for Congress raised approximately \$6070 at the event. The majority of the contributions received for the May 30 event were in increments of \$100.00 or less, and the individuals attending the event wrote checks directly to each of the campaigns.

Because the May 30 event was a small, low-dollar fundraising event, the costs for the event were minimal, and the three campaign committees did not share any event costs. Upon information and belief, the invitations for the event were sent out with no costs incurred via email and telephone, and the food and drinks were purchased for approximately \$400 and were paid for by Mr. Bucelo.

THE LAW

The Federal Election Campaign Act of 1971, as amended ("Act" or "FECA") provides that when an individual holds a campaign-related event for a federal candidate in his or her personal residence, the individual hosting the event may spend up to \$1,000 per candidate, per election, for food, beverages and invitations for the event without making a contribution to any candidate. See 2 U.S.C. § 431(8)(B)(i). Pursuant to this exemption, two adults who reside in the same personal residence may together spend up to \$2,000 per candidate, per election without making a contribution. Federal Election Commission ("Commission" or "FEC") regulations provide that:

The cost of invitations, food and beverages is not a contribution where such items are voluntarily provided by an individual volunteering personal services on the individual's residential premises . . . to the extent that: The aggregate value of such invitations, food and beverages provided by the individual on behalf of the candidate does not exceed \$1,000 with respect to any single election.

11 C.F.R. § 100.77.

In addition to the in-home event exemption, individuals may defray the cost of fundraising events – including costs other than for food, beverages, and invitations – on behalf of federal candidates up to \$2,300 per candidate, per election. See 2 U.S.C. § 441a(a)(1); 11 C.F.R. § 110.1.

Commission regulations set forth guidelines for joint fundraising by political committees other than separate segregated funds. See 11 C.F.R. § 102.17. These regulations allow a political committee to "engage in joint fundraising with other political organizations or with unregistered committee or organizations." 11 C.F.R. § 102.17(a)(1)(i). Pursuant to these regulations, the participants in a joint fundraising effort must either establish a separate political committee or select a participating committee to serve as their joint fundraising representative. See 11 C.F.R. § 102.17(a)(1)(i). The joint fundraising representative must be a reporting political committee and

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must also be an authorized committee of each participant who is a candidate for Federal office. *Id.* If the participants establish a separate political committee to act as the fundraising representative, that committee must "collect contributions, pay fundraising costs from gross proceeds and from funds advanced by participants, and disburse net proceeds to each participant." 11 C.F.R. § 102.17(b)(1). Participants also must "calculate each participant's share of expenses based on the percentage of the total receipts each participant had been allocated." 11 C.F.R. § 102.17(c)(7)(i)(A).

In addition to any notice required under 11 C.F.R. § 110.11, a joint fundraising notice must be included with the following information:

- (A) The names of all committees participating in the joint fundraising activity whether or not such committees are political committees under 11 C.F.R. § 100.5; and
- (B) The allocation formula to be used for distributing joint fundraising proceeds; and
- (C) A statement informing contributors that, notwithstanding the stated allocation formula, they may designate their contributions for a particular participant or participants; and
- (D) A statement informing contributors that the allocation formula may change if a contributor makes a contribution which would exceed the amount that contributor may give to any participant.

11 C.F.R. § 102.17(c)(2)(i).

DISCUSSION

A. There is No Reason to Believe a Violation Occurred Due to Respondents Not Establishing a Joint Fundraising Committee for the May 30 Event Because the Attributable Costs were Covered by the Hosts of the Event.

As was noted above, the May 30 event was held in the personal residence of Armando and Beatriz Bucelo, and the majority of the costs associated with the event fell within the \$1000 in-home event exemption. Accordingly, there was no need for respondents to form a joint fundraising committee for the May 30 event.

Because the May 30 event was a small, low-dollar fundraising event, the costs for the event were minimal. As was outlined above, upon information and belief the invitations for the May 30 event at the Bucelos' home were distributed via email and telephone with no out-of-pocket costs incurred. Mr. and Mrs. Bucelo did not hire a caterer, but instead purchased a small amount of beverages and food for guests at the event. Upon information and belief, the costs of these beverages and food was approximately \$400, well within the \$1000 in-home event exemption. Furthermore, upon information and belief there was no valet parking or entertainment at the May 30 fundraising event. Upon information and belief, there may have been incidental expenses – less than \$500 – for a photographer at the event. As noted above, individuals may make in-kind contributions to a

29044244209

Mr. Jeff S. Jordan
August 28, 2008
Page 4

Bryan Cave LLP

candidate up to \$2,300 per election. Accordingly, any incidental photography expenses associated with the May 30 event will be treated as in-kind contributions and duly reported to the Commission.

Because the majority of the costs associated with the May 30 event were paid for by the hosts and fell well within the in-home event exemption, the respondents were not required to establish a joint fundraising committee. Accordingly, there is no reason to believe that respondents violated the Commission's joint fundraising regulations at 11 C.F.R. § 102.17.

B. In Any Event, Given the Very Low Amount of Activity Involved, the Commission Should Dismiss the Complaint Based Upon Prosecutorial Discretion.

As was noted above, the May 30 event at the Bucelos' home was a small, low-dollar event – specifically, Roe-Lehtinen for Congress raised approximately \$6070 at the event, and the majority of the contributions received were in increments of \$100 or less. Given the very low amount of activity involved, regardless of the alleged application of the Commission's joint fundraising regulations, the Commission should dismiss the Complaint based upon prosecutorial discretion pursuant to Heckler v. Chaney, 470 U.S. 821, 831 (1985). See *In re Engel for Congress*, MUR 5220, SOR of Chairman Mason, Vice Chairman Sandstrom, & Comm'rs Smith & Thomas at 1 (April 18, 2002); *In re McCormick for Congress*, AR 99-20/MUR 5055, First General Counsel's Report at 2 (July 18, 2000); *In re Wn for Congress*, AR 00-03/MUR 5176, First General Counsel's Report at 3 (Feb. 15, 2001) (Commission exercised its prosecutorial discretion due to the relatively small amount of activity involved).

CONCLUSION

For the foregoing reasons, there is no reason to believe a violation occurred with respect to the allegations contained in the Complaint. In any event, given the very low amount of activity involved in connection with the May 30 event, the Commission should dismiss the Complaint based upon prosecutorial discretion pursuant to Heckler v. Chaney, 470 U.S. 821, 831 (1985). If the Commission were to decide to go forward with this matter, it should be assigned to ADR for appropriate disposition.

Respectfully submitted,



Michael E. Toner
Corinne A. Falencki

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